155-489

RECORD, CASE No. 14,473.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~1017~~. ~~(illegible)~~ 1349 83

R. SOPHIA CHASE, EXECUTRIX, &c., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED FEBRUARY 4, 1891.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 11, 1891.

1 Pleas of the circuit court of the United States for the district of Indiana begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and ninety, before Honorable Walter Q. Gresham, judge of said circuit court.

R. SOPHIA CHASE, Executrix of the Last Will and Testament of Hiram W. Chase, Deceased,
vs.
THE UNITED STATES OF AMERICA.
No. 8498. Civil Action.

Be it remembered that heretofore, to wit, at the May term of said court, on the 26th day of June, 1889, before Honorable William A. Woods, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the plaintiff, by A. C. Harris, Esq., her attorney, and files her complaint herein in the words following, to wit:

To the Honorable Walter Q. Gresham, judge of the seventh circuit:

The petitioner and complainant, R. Sophia Chase, executrix, a citizen of the city of La Fayette, in the State of Indiana, in said district, complaining of the United States of America, shows unto the honorable court that heretofore, to wit, on the 25th day of January, 1889, Hiram W. Chase, a citizen of the city of La Fayette and the husband of said petitioner, died testate, and his will was afterwards, to wit, on the 30th day of January, 1889, probated in the Tippecanoe circuit court, in the State of Indiana, in manner
2 and form as by statute provided, and is as follows:

"I, Hiram W. Chase, of La Fayette, Indiana, hereby make this my last will and testament. I give, bequeath and devise all my property, real, personal and mixed, to my beloved wife R. Sophia Chase, and I make her sole executor thereof."

Dated February 10, 1886.

(Signed) HIRAM W. CHASE. [SEAL.]

Said will being attested as by statutes of Indiana required and being duly probated as aforesaid, the said court did then and there, on the 30th day of January, 1889, appoint and commission your petitioner the sole executrix of the estate of said decedent, and she did then and there accept said trust, execute a bond to the approval of said court, and qualify in all things as by the statutes of said State required, and then became and ever since has been and still is the sole executrix of the estate of the said Hiram W. Chase, deceased.

And now she files this petition or complaint against the United States of America under and in pursuance of an act of Congress of date March 3, 1887, entitled "An act to provide for the bringing of suits against the Government of the United States" (Statutes 1886–'7,

p. 505), and she shows to the court that the amount of the claim which she now makes and presents against the United States of America exceeds the sum of one thousand dollars ($1,000) and does not exceed ten thousand dollars ($10,000), and arose in the manner following, that is to say—

Heretofore, to wit, on the 4th day of February, 1870, the United States of America having no sufficient facilities or building in the said city of La Fayette for a post office, and one James Mont-
3 gomery being then and there the owner of a vacant lot in said city of La Fayette well located for the convenience of the public as a site for a post-office building, the Government of the United States did then and there make and enter into a contract with the said James Montgomery as follows:

"This indenture, executed this fourth day of February, A. D. 1870, by and between the United States of America, by John A. J. Cresswell, Postmaster General of said United States, of the first part, and James Montgomery, of the city of Chicago and State of Illinois, of the second part, witnesseth:

That whereas heretofore, to wit, on the 17th day of January, 1886, a lease was executed by and between said United States of America, of the one part, and John K. Snider and Irene Snider, of the other part, whereby said Snider leased to said United States certain property in the city of La Fayette, Indiana, particularly described in said lease for the uses and purposes of a post office for a period of ten years from the first day of April, 1886; and

Whereas the property thus leased, together with said lease, was afterwards sold, conveyed, transferred, and assigned by said Sniders to said Montgomery; and whereas said property was afterwards, to wit, on the 24th day of December, 1869, destroyed by fire, whereby said lease was terminated; and

Whereas said Montgomery now proposes to rebuild said property and provide therein suitable rooms and accommodations for the uses and purposes of a post office in the city of La Fayette aforesaid, and to have them fully prepared for occupancy for the purposes aforesaid on or before the 1st day of May, 1870, which proposition of said Montgomery is hereby accepted by the said United States of America:

4 Now, therefore, in consideration of the premises, and in further consideration of the stipulations and conditions hereinafter recited, it is hereby covenanted and agreed that said party of the second part hereby leases and demises to said party of the first part for the term of twenty years, commencing on the 1st day of May, 1870, and ending on the 1st day of May, 1890, the following property, to wit: The basement room, first-floor room, and one back room in the second story fronting on Fourth street, on the west end of lot numbered eighty (80) in the original plat of the town (now city) of La Fayette, Indiana, being the corner of Fourth and Ferry streets, in said city of La Fayette, with right of ingress and egress to said second-story room over and through a passageway or hall to lead from Perry street to the second story aforesaid on the east of and adjoining said

post-office room; that said basement and said room on first floor shall not be less in size than twenty feet by thirty feet. In consideration whereof said party of the first part hereby accepts said lease for the term aforesaid of the premises above described, and agreeing to pay therefor to said Montgomery, his legal representatives or assigns, the yearly rent of fifteen hundred dollars, payable in quarterly installments of three hundred and seventy-five dollars on the first days of August, November, February, and May in each year during the continuance of this lease. It is expressly agreed by and between the parties in this lease that the same is made and accepted upon the following terms and conditions, to wit:

First. That said Montgomery shall at his own cost prepare the premises herein described for the uses and purposes of a United States post office at La Fayette aforesaid, and shall also at like expense provide such boxes, furniture, and fixtures as may be
5 necessary for the purposes aforesaid in such manner in all respects as shall be satisfactory to the Postmaster General of the United States and have the same in readiness for full use and occupancy on or before the 1st day of May, 1870.

Second. Said Montgomery shall at his own expense keep said demised premises, with the furniture and fixtures thereof, in good repair and proper condition for the purposes aforesaid during the continuance of this lease.

Third. Said party of the first part shall in nowise and under no circumstances be *lai*ble for damages arising from the injurious tactics or acts of any party or parties in actual possession of said premises, nor for any damage or injury which may *be* befall said premises from any other cause whatever.

Fourth. Should the premises herein described be rendered unfit for the purposes of a United States post office, by reason of fire or other cause, this lease shall thereby be terminated at the option of the party of the first part and said party of the first part released from all rents accruing subsequently to surrender of possession.

Fifth. The said premises shall be used by said party of the first part as and for a U. S. post office or any business connected therewith and for no other purposes whatever, and no sublease of the whole or any part of said premises shall be made without the written consent of said party of the second part, his legal representatives or assigns.

Sixth. A violation or non-performance of any of the foregoing provisions and conditions shall work a termination or forfeiture of this lease at the option of the party aggrieved after thirty days' notice.

And the said party of the second part hereby covenants
6 with the said party of the first part that he is lawfully seized of said premises and has good right and lawful authority to lease the same as herein, and that he warrants the quiet enjoyment of said premises under this lease against the claims of all persons whomsoever.

In witness whereof the seal of the Post Office Department and the signature of the Postmaster General, as well as the hand and seal

of the said Montgomery, are hereunto affixed the day and year *just* above written.

(Signed) JNO. A. J. CRESWELL,
Postmaster General.

Witness the signature of the Postmaster General:
GODLOVE S. ORTH.

Witness the signature of said James Montgomery:
JOHN W. J. CULTON.
HAROLD SPRAGUE."

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } *ss:*

I, Frank I. Wilson, a notary public in and for the city of Chicago, in the county and State aforesaid, do hereby certify that James Montgomery, personally known to me as the real person whose name is subscribed to the foregoing instrument of writing as having executed the same, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, at Chicago, this eighth day of February, A. D. 1870.

(Signed) FRANK I. WILSON,
Notary Public.

7 Afterwards, to wit, on the 28th day of February, 1870, the Government of the United States made a further contract with said Montgomery as follows:

"In consideration of James Montgomery agreeing to erect his building three stories in height, I, John A. J. Creswell, Postmaster General, do hereby agree that the time for said post-office room to be completed shall be extended from May 1st, 1870, to July 1st, 1870; the rent to commence on said 1st day of Ju'y, 1870.

Feb. 28, 1870.

(Signed) JNO. A. J. CRESWELL, *P. M. G.*"

Attest: GODLOVE S. ORTH.

Witness:
JOSEPH H. BLACKFAU.

The said Montgomery did comply with each and every stipulation and provision in said contract and completed said building within the time last above specified, and the Government of the United States did then and there, under and in pursuance of said contract, and not otherwise, on the 30th day of June, 1870, enter into and take possession of said premises for the uses and purposes in the above and foregoing lease and contracts expressly provided. Said lease was duly put of record in the office of the recorder of said Tippecanoe county on the 22nd day of February, 1870, and recorded in Miscellaneous Record No. 1, at page 41.

Afterwards, to wit, on the 15th day of April, 1870, the said Montgomery, by an assignment duly executed, acknowledged, and recorded in the office of said recorder in Miscellaneous Record No. 6, at page 70, assigned, transferred, and set over to Chauncey C. Tuttle, of La Fayette, Indiana, all his right, title, and interest in and
8 to the above lease and the extension of the same; said assignment is in the words and figures following, to wit:

"For value received, I hereby assign, transfer, and set over to Chauncey C. Tuttle, of La Fayette, Indiana, all my right, title, and interest to the within lease and extension of the same.

Chicago, Ill., April 15, 1870.

(Signed) JAMES MONTGOMERY.

Received for record Feb. 24, 1871, at 2 o'clock p. m. Recorded in Miscellaneous Record No. 6, page 70.

(Signed) J. A. CARR, *R. T. C.*

STATE OF INDIANA, }
Tippecanoe County, } *ss:*

John Ball, of said county, of lawful age, being duly sworn, says that he is acquainted with James Montgomery, the lessor described in and who executed the *written* and foregoing lease to the United States for lot eighty (80) in the original plat of the city of La Fayette, and that he saw said James Montgomery sign with his own hand the foregoing assignment of said lease and its extension to Chauncy C. Tuttle on the 15th day of April, 1870, as he verily believes.

Subscribed and sworn to before me Feb. 10th, 1871.

(Signed) JOHN A. WILSTACH,
Notary Public."

Afterwards, to wit, on February 10th, 1871, the said Tuttle executed to said Hiram W. Chase an assignment thereof as follows:

"For value received of Hiram W. Chase, I hereby assign to him the undivided one-half of the foregoing lease."

Dated February 10, 1871.

(Signed) C. C. TUTTLE.

Which assignment was then and there duly acknowledged
9 before John A. Wilstach, a notary public.

Afterwards, to wit, on the 10th day of March, 1877, the said Tuttle assigned to said Chase all the rest and remainder of his, said Tuttle's, interest in said lease and contract, as follows:

"For value received, I hereby assign all my right, title, and interest in this lease to Hiram W. Chase this 10th day of March, 1877."

(Signed) C. C. TUTTLE.

Which assignment was thereafter, to wit, on the 18th day of October, 1880, duly acknowledged before Fred. S. Chase, a notary public in and for said county of Tippecanoe.

And so by virtue of the foregoing assignments and acknowledg-

ments the said Hiram W. Chase, in his lifetime, became the owner entire of the unexpired term of said contract of lease for the uses and purposes therein provided, and of which fact the United States of America did at the times said Hiram W. Chase became the assignee thereof have full notice and knowledge, and from thence on did pay to said Hiram W. Chase the rental at the times and in the sums in the said contract and lease provided, and did require of him and he, the said Chase, did, from time to time, comply with each and every requirement on the part of the Government to improve and keep said post-office premises in the condition required by the postal authorities as by the said contract and lease provided until the 1st day of May, 1886, when the United States of America wrongfully refused to keep said premises longer and did then and there, without cause and without legal right, vacate said premises and has from that day until now, contrary to the terms of said contract, refused to occupy said premises or any part thereof under said
10 leasehold or to pay the amount agreed upon or any part thereof.

And your petitioner says that said lease does not expire until the 1st day of July, 1890; and your petitioner further says that upon the Government of the United States so wrongfully violating the terms of said contract he, the said Hiram W. Chase, and your petitioner, as executrix of his estate since his death, have at all times used all proper effort and diligence to secure tenants to occupy said premises so as to lessen the damages and losses as much as possible, and have kept an itemized and accurate account of all sums he and she have been able to realize by way of rental or otherwise of said premises, which amounts in the aggregate to the sum of three hundred and five dollars ($305.00), an itemized statement whereof is attached hereto and made a part hereof, marked "Exhibit A."

And your petitioner says that the said building was planned and erected as a post-office building and was not well suited for any other business or purpose; that the said Hiram W. Chase purchased said lease and contract as an investment at the time above set forth at an outlay of many thousands of dollars in full faith and belief that it was a valid contract and would be carried out and performed to the full period of the term contracted for, and that the postal officers of the United States had notice at the times of the said purchase of the said interests by the said Chase and of the making of the said investment upon the faith and belief aforesaid and of the assignment of the said lease by the owners thereof to him, said Hiram W. Chase.

Your petitioner says that the said Hiram W. Chase would not have made said purchase and investments, as the postal officers and agents of the Government did then and there well
11 knew, if he, the said Chase, had not then and there believed that the said contract of the Government as aforesaid would be faithfully performed.

And your petitioner further shows that during the time the said Chase held said lease and contract and while the premises were occupied by the Government thereunder he, the said Chase, from

time to time laid out and expended for furniture, fixtures, and internal repairs and required changes large sums of money, aggregating more than the sum of two thousand dollars ($2,000), and that he was engaged in making further repairs and additions, changes, and the like at the request and under the direction of the postal officers of the United States of America when the Government abandoned said premises without cause and without right.

And your petitioner shows that she will not be able during the unexpired term of said lease and contract to realize a greater rental therefor than she and said testator in his lifetime were able to realize heretofore after said breach; that by the terms of said contract the Government agreed to pay yearly "a rent of fifteen hundred dollars ($15,000), payable in quarterly installments of three hundred and seventy-five dollars ($375.00) on the 1st days of August, November, February, and May in each year during the continuance of this lease;" that thereby the Government is bounden by the terms of said contract to pay the said sums at said times, amounting in the aggregate for the unexpired four years of said lease to the sum of six thousand dollars ($6,000), together with interest at the rate of six per cent. per annum from maturity of each quarterly installment,

for which sum your petitioner prays judgment, less the said
12 sum of three hundred and five dollars ($305.00) so received and estimating in the aggregate for like credits an amount to the sum of $—.

R. SOPHIA CHASE.

STATE OF INDIANA, } ss:
County of Tippecanoe, }

Personally appeared before me, Frank W. Chase, a notary public in and for said county and State, R. Sophia Chase, to me personally known to be the executrix of Hiram W. Chase, now deceased, who, being by me first duly sworn, states that the matters and things in the annexed and foregoing petition are true to the best of her knowledge, information, and belief.

Witness my hand and official seal this 18th day of June, 1889.

FRANK W. CHASE, [SEAL.]
Notary Public.

"EXHIBIT A."

Statement of Amounts Received for Rent of Room Formerly Occupied by the Post Office in Building on Lot No. 80 since June 29, 1886.

1886.		
July 12.	For use of room one week during encampment, July 25 to August 3rd	$10 00
Nov. 28.	By W. H. Scott for colored fair	5 00
" 6.	By W. H. Scott for A. Fleming, rent room to build counter	5 00

1887.			
Jan.	4.	By cash, per Schott, for colored fair	5 00
Feb.	10.	By Connel & Ries, one month rent	20 00
Mar.	22.	" " " "	20 00
Apr.	29.	" " " "	20 00
May	28.	" " " "	20 00
Sep.	30.	By C. H. Sparks, accepted as in full to Oct. 1, 1887	20 00
13			
Nov.	1.	By C. H. Sparks as rent in full to Nov. 1, '87	20 00
Dec.	1.	" " " Dec. 1, '87	20 00
1888.			
Jan.	2.	" " " Jan. 1, '88	15 00
Feb.	2.	" " "	10 00
Mar.	1.	" " "	15 00
May	1.	" " "	15 00
June	2.	" " "	15 00
July	3.	" " "	15 00
Aug.	6.	" " "	15 00
1889.			
Feb.	25.	By La Fayette school trustees	20 00
Apr.	11.	" " "	20 00
			$305 00

U. S. A., }
District of Indiana, } *ss:*

The undersigned, being duly sworn, on oath says that a copy of petition and declaration has been served on Smiley N. Chambers, district attorney for said district, and has mailed a copy of the same by registered letter to Hon. W. H. H. Miller, Att'y Gen'l of the U. S., this June 25, 1889.

A. C. HARRIS,
Att'y for Pl'ff.

Subscribed and sworn to before me this 25th day of June, 1889.
CHAS. R. MYERS, [SEAL.]
Notary Public.

And afterwards, to wit, at the November term of said court, on the 22nd day of February, 1890, before Honorable William A. Woods, judge as aforesaid of said court, the following further
14 proceedings in the above-entitled cause were had, to wit:

Comes now Smiley N. Chambers, Esq., attorney for the United States, and files a demurrer to the complaint herein in the words following, to wit:

The defendant demurs to the complaint of the plaintiff herein, and for cause says:

1st. The complaint fails to show any specific authority conferred upon the Postmaster General by Congress for the execution of the

lease, and the length of time for which the same was executed exceeds his authority, either express or implied.

2nd. The complaint shows a surrender of the lease and acceptance of the same by the lessor.

S. N. CHAMBERS,
U. S. Dist. Att'y.

And afterwards, to wit, at the May term of said court, on the 29th day of October, 1890, before Honorable Walter Q. Gresham, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by their respective attorneys, and thereupon the court, being sufficiently advised, doth now sustain the demurrer of the defendant to the complaint herein.

And afterwards, to wit, at the November term of said court, on the 13th day of December, 1890, before Honorable Walter Q. Gresham, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Now again comes the plaintiff, by A. C. Harris, her attorney, and the defendant, by Smiley N. Chambers, its attorney, and the court, Honorable Walter Q. Gresham, circuit judge, presiding, doth now make the following statement of facts with his conclusions of law covering this cause, to wit:

15

GRESHAM, *J.:*

On July 17, 1866, John K. Snider leased to the United States for a term of ten years a lot and building standing thereon in the city of La Fayette, Indiana, to be occupied as a post office. The lessee held the premises until December, 1869, when the building was destroyed by fire, the lessor in the meantime having conveyed the title and his interest in the lease to James Montgomery. On May 1, 1870, Montgomery executed a lease to the United States, represented by John A. J. Cresswell, then Postmaster General, for described portions of a building which Montgomery covenanted in the instrument he would erect upon the same lot. The lease was for a term of twenty years at an annual rental of $1,500, payable in equal quarterly installments. The lessor agreed at his own expense to furnish and keep in repair all boxes and fixtures necessary for a post office to the satisfaction of the Postmaster General.

Montgomery erected a building according to the terms of the lease and the lessee went into possession. On April 15, 1870, Montgomery assigned his interest in the lease to Chauncy C. Tuttle, who, on February 10, 1871, assigned to Hiram W. Chase. Chase died January 25, 1889, testate, and the plaintiff was duly qualified as executrix of the will.

The lessee on May 1, 1886, without complaining that the lessor or any of his assignees had failed to comply with the terms of the lease, vacated the premises and refused to pay rent thereafter.

16

The declaration avers that after the assignment to Chase and while the premises were occupied by the lessee Chase from time to time laid out and expended for furniture, fixtures, and

required changes $2,000, and that he was engaged in making further repairs and additions, at the request of the postal officers, when the premises were vacated.

Judgment is demanded for $6,000, the rent claimed for the unexpired term of the lease.

The defendant demurred to the declaration.

The executive officers of the Government have no power to bind it by contract unless there be statutes expressly or by clear implication authorizing them to do so. The annual appropriations which are made by Congress to defray the expenses of the executive departments do not authorize heads of those departments to bind the Government by contracts beyond the time for which such appropriations are made applicable. It is true that when this lease was executed it was the duty of the Postmaster General to establish post offices for the convenience and accom-odation of people, and that an appropriation had been made to enable him to discharge that duty and pay rent for that year. This authorized him to lease buildings, not for a term of years, but for one year, the time for which the appropriation was applicable.

If the Postmaster General was authorized to lease the premises for twenty years he was authorized to buy them for the Government in fee, and it will not be contended that he could have done that.

Sec. 10 of the act of March 2, 1861 (12th Stat. at Large), provides that "no contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an
17 appropriation adequate to its fulfilment, except in the War and Navy Departments for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the current necessities of the year." There was no statute in force on the 4th day of February, 1870, or the 1st day of May of the same year other than that in which an appropriation was made to pay rent for the use of buildings occupied as post offices which authorized the Postmaster General to make a contract of lease. The tenancy commenced on the 1st day of May, 1870, and continued from year to year until the 1st day of May, 1883, when the Government abandoned possession and refused to pay rent thereafter. If they had been held longer, but less than a year, the Government might have been liable for another full year's rent as tenant by the year.

Demurrer sustained.

And thereupon the court doth sustain the demurrer of the defendant to the complaint or petition of the plaintiff on the ground, as stated in said finding, that the facts in said complaint or petition set forth are insufficient in law to constitute any claim or cause of action whatsoever against the United States; to which ruling of the court the plaintiff doth now except in proper form and manner; and thereupon the court rendered judgment against the defendant in these words, to wit:

And now the court, being fully advised in the premises and having stated the material facts in said petition set forth and found and

decided upon such facts that the law is with the defendant, doth now, therefore, sustain the demurrer of the defendant to the said complaint or petition of the plaintiff.

It is therefore ordered and adjudged by the court that the
18 plaintiff take nothing by this suit, and that the plaintiff pay the costs hereof, taxed at $—; to which decision, ruling, and judgment of the court the plaintiff doth except in proper form and manner.

And at the same time, on said 13th day of December, 1890, before Honorable Walter Q. Gresham, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the plaintiff, by A. C. Harris, Esq., *his* attorney, and files her motion for a writ of error, with assignment of errors herein, in the words following, to wit:

Comes now the petitioner and complainant and moves the court for a writ of error out of this court bringing said case into the Supreme Court of the United States, and she makes the following assignment of errors:

1. The circuit court of the United States for the district of Indiana erred in sustaining the demurrer of the defendant, The United States of America, to the petition, complaint, or declaration filed herein by the plaintiff, to which she excepted at the time.

2. Because the said court erred in holding as matter of law upon the facts specially found and set forth of record that the defendant, The United States of America, was not liable in any sum whatsoever to the plaintiff because of the breach of the contract made by the lease described and set out in the petition, to which she excepted at the time.

3. Because the said court erred in holding as matter of law that at the time the Postmaster General executed the lease sued on herein and set out in and with the declaration that, as Postmaster Gen-
eral, he had no power or legal authority to make a contract
19 of leasing for a longer period than two years, and so erred in holding that the lease was void, to which she excepted.

4. Upon the said facts found to be true by the said court the law awards the plaintiff damages for the breach of the contract sued on in the sum of $—, and so the plaintiff says that the court erred in refusing upon the facts aforesaid to award her judgment for said sum accordingly, with interest; wherefore, in obedience to the rules of the Supreme Court of the United States promulgated on November 3, 1890, the plaintiff files this motion and the foregoing assignment of errors and prays this honorable court to grant unto her a writ of error in manner and form as by the statutes and rules of court provided in such behalf.

And will the court fix the sum of money and penalties of a bond to be filed herein to secure a writ of error herein in manner and form as provided by statute.

ADDISON C. HARRIS,
Att'y for Pl'ff.

And at the same time the plaintiff files her appeal bond herein in the sum of $250.00, with Frank W. Chase as surety thereon, which bond is approved by the court, and is in the words following, to wit:

Know all men by these presents that we, R. Sophia Chase, adm'x; Sophia Chase, and Frank W. Chase, are held and firmly bound unto the above-named United States in the sum of two hundred and fifty dollars, to be paid to said United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents.

20 Sealed with our seals and dated this eighth day of December, 1890.

Whereas the above-named R. Sophia Chase, adm'x, hath prosecuted her writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana: Now, therefore, the condition of this obligation is that if the above-named R. Sophia Chase, adm'x, shall prosecute *his* said writ of error to effect and answer all costs and damages that may be adjudged or awarded against *him* if he shall fail to make good *his* plea, then this obligation to be void; otherwise in full force.

R. SOPHIA CHASE. [SEAL.]
FRANK W. CHASE. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Taken and approved by me this 8th day of December, 1890.

W. Q. GRESHAM,
Circuit Judge.

21 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of R. Sophia Chase, executrix, &c., *vs.* The United States of America as fully as the same appears of record and remains on file in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 15th day of January, A. D. 1891.

NOBLE C. BUTLER, *Clerk.*

22 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the district of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said circuit court, before you, between R. Sophia Chase, executrix, &c., and the United States, a manifest error hath happened, to the great damage of the said R. Sophia Chase, executrix, &c., as by *his* complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 15th day of January, A. D. 1891.

NOBLE C. BUTLER, *Clerk.*

23 UNITED STATES OF AMERICA:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein R. Sophia Chase, executrix, &c., is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable William A. Woods, *ex officio* judge of said circuit court of the U. S. for the dist. of Indiana, this 15 day of January, in the year of our Lord one thousand eight hundred and 91.

WM. A. WOODS.

24 On this 15th day of January, in the year of our Lord one thousand eight hundred and 91, personally appeared Wm. L. Dunlap, U. S. marshal, before me, the subscriber, and makes oath

that he delivered a true copy of the within citation to Hon. Smiley N. Chambers, U. S. attorney for Indiana.

WILLIAM L. DUNLAP,
U. S. Marshal.

Sworn to and subscribed the 15th day of January, A. D. 1891.

NOBLE C. BUTLER, *Clerk.*

Service	$2 00
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Endorsed on cover: Case No. 14,473. Indiana C. C. U. S. No. 1017. R. Sophia Chase, executrix, &c., plaintiff in error, *vs.* The United States. Filed February, 4, 1891.

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OCT 22 1894
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In the Supreme Court of the United States.

OCTOBER TERM, 1894.

R. SOPHIA CHASE, EXECUTRIX, &c., plaintiff in error,
v.
THE UNITED STATES.

No. 83.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

MOTION TO DISMISS THE WRIT OF ERROR AND BRIEF.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

R. SOPHIA CHASE, EXECUTRIX, &C., plaintiff in error, v. THE UNITED STATES. } No. 83.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

MOTION TO DISMISS THE WRIT OF ERROR AND BRIEF.

The Solicitor-General respectfully submits that there is no jurisdiction in this court by writ of error to review the judgment complained of in the circuit court of the United States for the district of Indiana. He therefore moves that the writ of error be dismissed.

LAWRENCE MAXWELL, JR.,
Solicitor-General.

STATEMENT.

This is an action, commenced in the circuit court of the United States for the district of Indiana, to recover $6,000 rent claimed to be due under the terms of a certain lease to the United States, in which judgment was rendered by the circuit court on October 29, 1890, in favor of the defendants; whereupon the plaintiff in error sued out a writ of error issued January 15, 1891, in response to which the record was filed in this court on February 4, 1891.

ARGUMENT.

This case, coming to the court as it does by writ of error, presents the opportunity for an authoritative construction of the appellate provisions of the act of March 3, 1887 (c. 359, 24 Stat., 505), commonly known as the Tucker Act, and for the decision of the question whether the judgments of circuit and district courts under that peculiar jurisdiction should be brought up for review by appeal or by writ of error.

This question has grown greatly in importance since the interposition of the circuit courts of appeal as reviewing tribunals. Owing to unfamiliarity of many district attorneys and Federal judges with the Court of Claims practice, and the inaccessibility of reports of the decisions of that court, the methods adopted in bringing up judgments and records for review and the rulings of the courts thereon vary widely and are extremely confusing. In many cases the right of litigants to review such judgments is jeopardized, and, indeed, entirely defeated.

In one circuit court of appeals, appeals are dismissed because no bill of exceptions is settled bringing into the record the various objections and exceptions saved in the course of the trial. In others, both attorneys and court apparently deem it essential that the evidence taken on the trial be embodied in the record. In very many the importance and significance of the findings of fact and conclusions of law are wholly lost sight of by reason of misapprehension as to the proper method of review. In others, appeal is held to be proper. *United States* v. *Fletcher* (60 Fed. Rep., 53); *United States* v. *Yukers*, (*Ib.*, 641).

The existing statutes for the review of judgments of the Court of Claims reached their present form in the Revised Statutes in 1874, in §§ 707, 708, by the latter of which authority was expressly conferred on the Supreme Court to regulate the method of allowing appeals. By virtue of these statutes certain rules prescribed by the Supreme Court have been incorporated into and have undoubtedly become a part of the law regulating the appeals; among others Rule I, limiting the review to the purely legal question, *what judgment properly results from the facts found by the trial court*, thereby eliminating many of the questions usually presented on appeals, but more especially eliminating those matters which are presented by writs of error and require exceptions to be taken in the trial court and bills of exceptions to be settled to bring them into the record, such as error in the admission or rejection of evidence, or in making findings of fact unsupported by evidence or contrary to the undisputed evidence. The single question so to be considered

requires no variation in the method of bringing it up, and therefore an *appeal* only is provided and no writ of error authorized. (*United States* v. *Young*, 94 U. S., 258, 259.)

Under this jurisdiction grew up a well-recognized class of cases known as claims against the United States, distinguished from all other litigations by the character of the defendant, and unaffected by the nature of the transactions out of which they sprung or by considerations as to whether they would have been legal or equitable in their character if between individuals.

When in 1887, by the Tucker Act, *concurrent* jurisdiction over this same class of cases was conferred on circuit and district courts, no change took place in the distinctiveness of the class; they remained cases of claims against the United States as before. The statute, § 9, gave to the parties "the same rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made. * * * "The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects as near as may be to the statutes and rules of court governing appeals and writs of error in like causes."

This court has had occasion to pass upon this portion of the statute but once, viz, in *United States* v. *Davis* (131 U. S., 36). That was an *appeal* from a judgment in an action of legal, as distinguished from equitable, character, rendered by the district court of the district of Maryland. This court held that the rights of appeal and writ of error reserved by the Tucker act were the same as formerly existed from the Court of Claims, and that the words in

that act "reserved in the statutes of the United States in that behalf made" meant reserved with reference to judgments in cases of claims against the United States in the Court of Claims.

The statute has received further construction at the hands of Mr. Justice Lamar, sitting at circuit in *Strong* v. *United States* (40 Fed. Rep., 183, so. dist. Ala.). The logic of the Davis case is there slightly amplified, and it is held that the right to the review of judgments in claims cases in circuit and district courts is controlled by the statutes regulating reviews of judgments of the Court of Claims; in other words, sections 707 and 708, Revised Statutes, are held to be, by the section above quoted, embodied in the Tucker act, and therefore to constitute and limit the full measure of review to which either party is entitled. The learned justice said:

> We think the general scope and purpose of the act [24 Stat., 505] negatives the contention that any larger right of appeal is allowed in the district or circuit courts than is by the then existing statutes allowed in the Court of Claims.

This principle applied to the present case is conclusive of the motion to dismiss the writ. Writ of error is not and never was authorized to review judgments of the Court of Claims and therefore is not available to bring up for review judgments of the circuit and district courts rendered in their concurrent jurisdiction over claims cases.

Another consideration exists in the long and well-established practice of this court under the Tucker Act to take jurisdiction by appeal from judgments which in case of individual litigants would be reviewable only on writ

of error. In an appendix we subjoin a list of all the reviews of judgments of circuit or district courts in claims cases upon which this court has passed otherwise than to dismiss either on stipulation or on motion of the appellant or plaintiff in error. They are all *appeals* and all except three are actions at *law*, as distinguished from suits in equity. So far as we have been able to discover, no case other than the one at bar has been brought to this court by writ of error, except that of Richard S. Tuthill, which was dismissed in April, 1890, on motion of the Government, plaintiff in error, for what reason we have been unable to ascertain. We respectfully submit that the writ of error at bar should be dismissed.

JOSHUA E. DODGE,
Assistant Attorney-General.

LAWRENCE MAXWELL, JR.,
Solicitor-General.

APPENDIX.

United States v. *Schofield* (Maryland), 131 U. S., 36. Motion to dismiss overruled.

United States v. *Barber* (Mid. Alabama), 140 U. S., 164. Affirmed.

United States v. *Tuthill* (No. Illinois). Writ of error dismissed April, 1890, on motion of the plaintiffs in error.

United States v. *Jones* (Oregon), 131 U. S., 1. Reversed.

United States v. *Taubenheimer* (Oregon), 131 U. S., 1. Reversed.

United States v. *Montgomery* (Oregon), 131 U. S., 1. Reversed.

United States v. *Barber* (Mid. Alabama), 140 U. S., 177. Reversed.

United States v. *Barber* (Mid. Alabama), 140 U. S., 164. Affirmed.

United States v. *Poiner* (South Carolina), 140 U. S., 160. Reversed.

United States v. *McDermott* (Kentucky), 140 U. S., 151. Reversed.

United States v. *Jones* (So. Alabama), 147 U. S., 672. Reversed.

United States v. *Fletcher* (E. Arkansas), 147 U. S., 664. Reversed.

United States v. *Faulkner* (Mid. Tennessee), 145 U. S., 658. Reversed on stipulation.

United States v. *Van Duzee* (No. Iowa), 140 U. S., 169. Reversed.

United States v. *Julian* (Mid. Tennessee), 145 U. S., 659. Reversed on stipulation.

United States v. *Taylor* (E. Tennessee), 147 U. S., 695. Reversed.

United States v. *Harmon* (Maine), 147 U. S., 268. Affirmed.

United States v. *Carter* (E. Tennessee), 140 U. S., 702. Reversed on stipulation.

United States v. *Julian* (Mid. Tennessee), 145 U. S., 659. Reversed on stipulation.

United States v. *Clough* (W. Tennessee), 145 U. S., 658. Dismissed on Government's motion.

United States v. *Ewing* (E. Tennessee), 140 U. S., 142. Reversed.

United States v. *Hall* (N. Ohio), 147 U. S., 691. Reversed.

United States v. *Julian* (Mid. Tennessee), 145 U. S., 659. Reversed on stipulation.

United States v. *Pitman* (Rhode Island), 147 U. S., 669. Affirmed.

United States v. *Fitch* (E. Louisiana), 145 U. S., 658. Dismissed on Government's motion.

United States v. *Bashaw* (E. Missouri), 152 U. S., 436. Reversed.

○

ADDENDA.

Since the preparation of the foregoing brief information has been received of a decision rendered by the circuit court of appeals for the eighth circuit, on the 24th of September, ultimo, in the case of United States, appellant, *v.* Morgan, appellee. Inasmuch as the opinion in this case is not likely to be published before this motion will be submitted, we venture to append the substance of it.

After reciting the fact that the action of Morgan *v.* The United States, appealed from the circuit court for the eastern district of Missouri, was a suit for fees, and that motion had been made by the appellee to dismiss the appeal on the ground that the court had no jurisdiction to review the judgment because not brought up by writ of error, the court recites the statutes with reference to appeals from the Court of Claims, sec. 707, R. S., and the provisions of chap. 359, of the laws of 1887, and says:

> It may be conceded that a writ of error is the proper process for the review of an action at law in the absence of legislation specifying any other method of review, and that the action on which this judgment is based is in the nature of an action at law. It is worthy of notice, however, that the act of March 3, 1887, expressly provides the course of procedure from the inception of this suit to its conclusion. It

provides in section 5 that the plaintiff shall file his petition, that it shall be verified, what it shall state, and the prayer it shall contain. In section 2 it provides that all causes brought and tried under it shall be tried by the court without a jury, and, in section 7, that the court shall file a written opinion in the cause, which shall set forth the specific findings by the court of the facts therein and the conclusions of the court upon all questions of law involved in the case, and shall render judgment thereon. An appeal is certainly not an inconvenient nor an inappropriate method of reviewing a judgment on the record that such a procedure preserves. But we are not left to arguments from convenience or expediency here. Actions against the Government can not be maintained under the common law. They are the creatures of the statute that permits them to be, and must be governed and limited by its provisions.

The law in force when the act of 1887 was passed expressly granted to the United States the right to review by appeal every judgment against them in actions of the nature of that at bar. (Sec. 707, Rev. Stat., *supra*.) The act of 1887, the primary object of which was to give to the circuit and district courts concurrent jurisdiction with the Court of Claims over this and all other actions specified in section 1 of the act, expressly provides in section 4 that the right of exception on appeal in all proceedings under that act shall be governed by the law then in force. As the law then in force gave the United States this right to review all judgments in actions of the nature of that before us by appeal, this provision, in our opinion, not only failed to deprive them of that right, but expressly reserved it to them. It goes without saying that if the United States had this right of appeal from such judgments to the Supreme Court after the

act of 1887, they have the right to appeal from them to this court under the act creating it. In our opinion that right exists, and this court has jurisdiction to review the judgment below on this appeal. (*United States* v. *Davis*, 131 U. S., 36; *Strang* v. *United States*, 40 Fed. Rep., 183.)

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

Term, No. 83.

R. SOPHIA CHASE, Executrix, Etc.,
Plaintiff in Error
vs.
THE UNITED STATES,
Defendant In Error.

REPLY OF PLAINTIFF IN ERROR TO DEFENDANT'S MOTION TO DISMISS WRIT OF ERROR.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

R. SOPHIA CHASE, EXECUTRIX, ETC.,
Plaintiff in Error,
vs.
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Defendant in Error.
TERM NO. 83.

REPLY OF PLAINTIFF IN ERROR TO DEFENDANT'S MOTION TO DISMISS WRIT OF ERROR.

Counsel for plaintiff in error is unable to interpret the law governing her rights in this case as does the Solicitor General.

It is not thought that the Circuit Courts of the United States are required to adopt the rules of procedure in the Court of Claims whenever they exercise their "concurrent jurisdiction" given by the Tucker act. Such a requirement would violate the Legislative provision which allows courts to provide their own rules of procedure.

The theory advanced by the Solicitor General that the *class* of the claim, rather than the statutes and rules governing procedure, determines whether the aggrieved party shall go to the Supreme Court by appeal or by writ of error, is untenable.

Such a matter is not usually governed by the *class* to which it belongs, but generally by the procedure under which it is conducted. A court is authorized to make

rules to govern its *own* procedure, but not the procedure in another court. One court cannot be supposed to know what rules best suit a different court. The mode of procedure in the Court of Claims does not govern the procedure in the United States Circuit Courts.

Rules of procedure are only subject to the court which promulgates them and the law circumscribing its jurisdiction.

Section 690 of the Revised Statutes of the United States provides, that "the Supreme Court shall have appellate jurisdiction in the cases hereinafter specifically provided for."

Section 691 enacts that "All final judgments of any Circuit Court or of any District Court, acting as a Circuit Court, in civil actions brought there by original process, or removed there from courts of the several States, and all final judgments of any Circuit Court in civil actions removed there from any district court by appeal or writ of error, where the matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars, may be re-examined and reversed or affirmed in the Supreme Court upon a *writ of error*." This case was a "civil action" and an action *at law* in the United States Circuit Court.

The U. S. Circuit Court for Indiana rendered a final judgment in this cause. This Statute says that final judgments in civil actions "may be re-examined * * * upon a writ of error."

What did the Tucker law enact?

It conferred jurisdiction, by the first section, upon the Court of Claims of the United States, under its own rules of procedure, to hear and determine "All claims founded upon the constitution of the United States or any law of Congress, except pensions, or upon any regulation of an Executive Department, or upon any contract, express or implied with the Government of the United States, or for

damages, liquidated or unliquidated in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States, either in a court of law, equity or admiralty, if the United States were suable." 24, S. L., U. S., 505.

By the Second Section thereof, Congress conferred concurrent jurisdiction to hear and determine such claims in amounts of $1,000 to $10,000 upon the U. S. Circuit Courts *under their own modes of procedure.*

Inasmuch as there is no provision for a writ of error in appeal from the Court of Claims to the Supreme Court, but only simple appeal, and no provision in the modes of procedure in the United States Circuit Courts for review of their judgments at law in the Supreme Court, except on writ of error, Section 9 of said Tucker Act was enacted "That the plaintiff, or the United States, in any suit brought under the provisions of this act shall have the same rights of appeal *or* writ of error as are now reserved in the Statutes of the United States *in that behalf made*, and upon the conditions and limitations therein contained. The modes of procedure in claiming and perfecting an appeal or *writ of error* shall conform in all respects, as near as may be, to the statutes and rules of court governing appeals and writs of error in like causes," in these respective courts.

This means that in these courts such cases may be appealed to the Supreme Court, and where the law and modes of procedure provide for the taking of a case to the Supreme Court, on final judgment, by writ of error, that the case may go to the Supreme Court "under the modes of procedure in claiming and perfecting a writ of error" in the United States Circuit Courts. Writ of error in actions at law in the U. S. Circuit Courts is the only means provided for the review of a final judgment "in civil actions" in the Supreme Court, and the Tucker Act expressly recognizes this fact. From the Court of Claims

the review is on appeal, and in the U. S. Circuit Courts, the review is upon a writ of error.

It must be assumed that Congress knew in passing this Act of March 3, 1887, commonly called the Tucker Act, that the modes of procedure in the Court of Claims for taking all cases to the Supreme Court, was by appeal; and that Congress also knew that final judgments of the U. S. Circuit Courts in actions at law were re-examined in the Supreme Court upon writ of error, and that when in Section 9 of the Tucker Act, it was stated that the "rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made," it was meant that final judgments from the Court of Claims should be re-examined in Supreme Court on appeal, and that final judgments in actions at law from the U. S. Circuit Courts should be re-examined by the Supreme Court upon *writs of error*.

Two modes of procedure were contemplated. Any other view would render the use of the words, writ of error, in said Section 9, meaningless and idle.

Section 4 of the Tucker act provides that "the course of procedure shall be in accordance with the established rules of said respective courts, and of such additions and modifications thereof as said courts may adopt."

Section 10 of said act mentions appeals and writs of error in accordance with the terms of the statutes and rules of practice governing the same, in these respective courts of course.

The case of United States *vs.* Young, 94 U. S., 258, cited in the Solicitor General's brief, was a Court of Claims case, in which the modes of procedure for are-view in the Supreme Court require an *appeal*, which is no precedent for the U. S. Circuit Courts, wherein the modes of procedure for a review of a final judgment is on *writ of error*.

By Section 707, R. S. U. S., "An *appeal* to the Supreme Court shall be allowed, on behalf of the United States,

from all judgments of the Court of Claims adverse to the United States," and inasmuch as, by the Tucker Act, the U. S. Circuit Courts have concurrent jurisdiction, it was held in U. S. *vs.* Davis, 131 U. S., 36, that an *appeal* would lie, in such case, from the District Court, but it was not a question in that case whether the review in the Supreme Court should be "on appeal" or "upon writ of error." If the United States had brought up the case upon writ of error, if such mode of procedure is provided for by the rules of said District Court, as it *is* provided for in Section 691, *supra*, this court would have reviewed the judgment just the same.

The "writ of error" is not abolished in the U. S. Circuit Courts in this concurrent jurisdiction by Section 707, R. S. U. S., and the Tucker Act. Ssection 691 has not been repealed by the subsequent legislation referred to.

The most that may be said of the matter in the light of the Davis case, is, that such cases may be reviewed in the Supreme Court *either* on appeal or upon writ of error from the U. S. Circuit Courts. This court has never promulgated the doctrine clipped from the Strong Case, 40 Fed. Rep.

The fact that the cases cited in the appendix to the Solicitor General's brief are all, except three, actions at law, amounts to nothing in determining this question, when the modes of procedure and the statutes point out the way to get into the Supreme Court for the review of a final judgment, in civil actions.

The case cited in the "*addenda*" to the Solicitor General's brief is not inconsistent with the position here taken, that a right of review in the Supreme Court upon *writ of error* remains with litigants in the U. S. Circuit Courts. That case simply decides that the right of *appeal* also exists.

It does not decide upon anything else. It does not say that writ of error is not allowed. That case holds that

Section 4 of the Tucker Act provides for "the right of exception on appeal in all proceedings under that act shall be governed by the *law then in force.*" The law then in force was Section 691, R. S. U. S., and directed a review of a final judgment in actions at law in U. S. Circuit Courts upon *writ of error.*

The rights reserved to the United States by said Section 707 are greater than that granted to citizens.

The United States may appeal *any* adverse judgment whereas a citizen cannot, unless the judgment exceeds $3,000. The cases cited are all appeals on behalf of the United States. In the McDermott case there was a cross-appeal.

In any event the lower court must state the facts found in writing and also its conclusions of law. Writ of error will bring such findings and judgment to the attention of this court in quite as good form for review as does the appeal, so-called. The United States, already having greater rights of review than citizens, will not suffer by a review of the case at bar upon writ of error.

The results will be precisely the same. And, since no undue advantage can flow to this plaintiff in error from a review of this case on writ of error, and since writ of error is expressly provided for from the U. S. Circuit Courts, in all actions at law, such as this case is, it is submitted that the case is properly before the Supreme Court for its action.

Respectfully submitted,

ADDISON C. HARRIS,
Attorney for Plaintiff in Error.

CHANEY & RANNELLS,
Of Counsel.

Office Supreme Court U. S.
FILED.
OCT 12 1893
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RECORD, CASE No. 14,473.

Supreme Court of the United States

OCTOBER TERM, 1893.

TERM No 379.

R. SOPHIA CHASE, EXECUTRIX, ETC., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

BRIEF FOR PLAINTIFF IN ERROR.

ADDISON C. HARRIS,
Attorney for Plaintiff in Error.

Journal Job Print, Indianapolis.

RECORD CASE No. 14 473.

Supreme Court United States.

R. SOPHIA CHASE, Executrix,
v.
THE UNITED STATES.
TERM No. 379.

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT.

This action was brought against the United States under the Act of March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States."

24 Stat. at Large, p. 505

The verified petition states the facts. Tr. pp. 1-7. And the Court in obedience to the act made a finding of facts. Tr. p. 9-10.

Summarized, the facts are:

1. In 1866 the United States leased a certain lot and building thereon in LaFayette, Indiana, for a post-office for ten years.

2. In December, 1869, the building was destroyed by fire.

3. In February, 1870, a contract (lease) was made between the Postmaster-General and the owner of the lot to the effect that the owner of the lot should "rebuild said property and provide therein suitable rooms and accommodations for the use and purposes of a post-office in the city of LaFayette" which rooms are particularly described as to location, size, etc., etc.; and "provide such boxes, furniture and fixtures as may be necessary for the purposes aforesaid, in such manner in all respects as shall be satisfactory to the Postmaster General" ready for occupancy by May 1, 1870; and at his own expense keep the premises in good repair for post-office purposes for twenty years. In consideration whereof the Postmaster-General agreed to occupy the premises "as and for a United States post-office" for twenty years, at a yearly rent of $1,500, payable quarterly. *Vide* lease, Tr. p. 2-3.

4. Before the building was finished, the Postmaster-General agreed that the time for completion should be extended to July 1, 1870, the rent to commence on that day. (Tr. p. 4)

5. The Postoffice Department entered and occupied the premises under this lease, paying the rent until May 1, 1886, when, without cause, it vacated the premises.

6. The lot and lease passed from the original owner (Montgomery), in 1877, to Hiram W. Chase, (the testator), (Tr. p. 5,) who continued to keep the premises, furniture and fixtures in repair, to the entire satisfaction of the Department, and to whom the Department paid the rent until it vacated the premises on May 1, 1886. (Tr. p. 6.)

7. Mr. Chase died in January, 1889, devising all his property to his wife and making her his sole executrix. (Tr p. 1.)

8. During the time Mr. Chase owned the property he expended $2,000 in maintaining the boxes, furniture and the like in the post-office, and was making further expenditures under the direction of the Postal Department when the Government, without cause, abandoned the premises. (Tr. p. 7.)

9. The case was heard in October, 1890. So the term of twenty years had run before the hearing. (Tr. p. 9).

The District Attorney demurred for two causes:

1. "The complaint fails to show any specific authority conferred upon the Postmaster-General by Congress for the execution of the lease; and the length of time for which the same was executed exceeds his authority, either express or implied"

2. The complaint shows a surrender of the lease and acceptance of the same by the lessor." (Tr. p. 8 9.)

I shall assume no reliance will be had on the last cause. An effort by a landlord to lessen the damages after breach, is not a waiver. Besides, the Circuit Judge in compliance with the Act afor said, made a Statement of facts (Tr. p. 9), and published an opinion (*Chase* v. *United States*, 44 F. R. 732), by which it appears that the Court held the act of the Postmaster-General was *ultra vires*.

This is the only question.

ASSIGNMENT OF ERRORS.

1. The Circuit Court of the United States for the District of Indiana erred in sustaining the demurrer of the defendant, the United States of America, to the petition, complaint, or declaration filed herein by the plaintiff.

2. The said Court erred in holding as matter of law upon the facts specially found and set forth of record that the defendant, The United States of America, was not liable to the plaintiff at all, because of the breach of the contract described and set out in the petition.

3. The said Court erred in holding as matter of law that at the time the Postmaster-General executed the lease sued on herein, he had no power or authority to make a contract of leasing for a longer period than one year, and so erred in holding that the lease was void.

4. Upon the facts found to be true by the said Court, the law awards the plaintiff damages in the sum of $5,695, and so the plaintiff in error says that the Court erred in refusing upon the facts aforesaid to award her judgment for said sum accordingly, with interest; wherefore, she asks that said judgment be in all things reversed.

ARGUMENT.

The American post-office is older than the government. I have not the books at my command to enable me to give a full history of the post-office. It is enough perhaps to say that in 1710, Parliament established by law the postal system in this country. It was under this system that Franklin became deputy-postmaster at Philadelphia in 1737, and rose to be Postmaster-General in 1753, which office he held until removed for political reasons in 1774.

He operated the department as the general manager of the enterprise. His relation to the department was quite like the manager of a modern express or other public company. This appears from a letter to a friend, December 30, 1770.

"If they would have my office they must take it. I have heard of some great man whose rule it was with regard to offices, never to ask for them, and never to refuse them; to which I have always added in my own practice never to resign them. As I told my friends, I rose to that office through a long course of service in the inferior degrees of it. Before my time, through bad management, it never produced the salary annexed to it; and when I received it no salary was to be allowed if the office did not produce it. During the first four years it was so far from defraying itself that it became £950 in debt to me and my colleague. I had been chiefly instrumental in bringing it to its present flourishing state, and therefore thought I had some kind of right to it."

Bigelow's Life of Franklin, Vol. 2, p. 65 and 66.

He employed the deputies, riders, etc., under contracts fixing the compensation and the like. The Crown removed him a short while after the date of the above letter.

On July 26, 1775, Congress assumed control of the post-office as it then existed, and restored Franklin to its head.

1 Jour. Cong. 124.

An early ordinance directed the Postmaster General "to *superintend* and direct the post-office in all its various departments and services."

4 Jour. Cong., p. 93.

And the Postmaster-General is usually regarded as a superintendent.

Ware v. *U. S.*, 4 Wall 630;
3 Jour. Cong. 678;
4 Jour. Cong. 93;
Act Cong. Sept. 22, 1789;
Act Cong. Aug. 4, 1890;
Sam'l Osgood Report 1 Am. Cong., vol 2, p. 2112;
Act Cong. Feby. 20, 1792;
Act May 8, 1794;
Encyc. Brit. tit. Post-office U. S.;
Am. Bankers Mag., N. S., vol. 7, p. 358.

Our reading is that the Postmaster-General before and during the revolution and up to the adoption of the constitution, was the superintendent of the business of the post. And that he had plenary power to carry on the business and do anything necessary for the welfare of the post, unless restrained by some law. That this system was continued after the adoption of the present constitution. And that in a general sense the Postmaster-General has always sustained a relation to the postal business like a general superintendent of an express company or any other business needing rooms and the like for the convenient service of the people. It will hardly be denied that a superintendent of a business of transporting packages, freights or passengers, would have the necessary power to make reasonable contracts for business rooms and other accommodations. And the extent of his power might in time come to be found in the approval of his course of conduct.

Now it is well known to all that it was a common practice for the Postmaster-General to lease buildings for a longer term than one year. This is a matter of common knowledge. I feel sure the files in the Post-office Department will disclose that it was common to engage quarters for a term of years.

This case discloses that in 1866 the Postmaster-General leased quarters in LaFayette for ten years. And the building being destroyed by fire in order to secure quarters such as the Postmaster General desired, he agreed with Montgomery if he would erect a new building and provide such quarters and furnish and maintain the boxes, etc., he would lease the same for twenty years. It will appear hereafter in connection with this case that other twenty year leases were made. I feel therefore that I may safely assume that the Postmaster-General for many years had been accustomed to engage quarters for various terms as he found it best for the postal service. This being so, it would seem to follow that this lease was not void.

It clearly appears from the finding and the opinion in the Federal Reporter *supra*, that the trial court held the Postmaster-General was impotent to engage quarters for any period longer than one year. And he based his conclusion on Sec. 3732 R. S.

The section reads:

"No contract or purchase on behalf of the United States shall be made *unless* (1) *the same is authorized by law, or* (2) *is under an appropriation adequate to its fulfillment;* except in the war and navy departments, for clothing, subsistence, forage, fuel, quarters or transportations, which, however, shall not exceed the necessities of the current year."

It is claimed that this statute debarred the Postmaster-General from making this lease.

So far as we can discover, the phrase "authorized by law" used in section 3732, has been construed once only. In 15 Attorney-General Opinions 235, it is said:

"To be authorized by law under Section 3732, express statutory authority is unnecessary. It is sufficient if the authority is neces-

sarily inferable from some duty imposed upon the claimant of the authority."

At page 240 of the same volume, Attorney-General Devens remarks that some of his predecessors seem to have thought that "authorized by law" meant "*expressly*" authorized, citing 4 Attorney General Opinions, 600, and 9 Id. 18, but he declined to entertain that view. On referring to these opinions, we find that they relate to an entirely diff rent statute.

The law under consideration in those opinions was an act of 1820, which forbade certain heads of departments from making contracts except "*under a law authorizing*" the same. Upon this statute, Attorney Generals Clifford and Black held, as they were bound to hold, that where "a law authorizing" was required, that express authority was demanded. When we speak of "*a law*," we mean some definite, express, legislative provision, but when we speak of something "authorized *by law*," we include much more than express provisions; the common law; established customs; necessary implications from general statutes, etc., etc.

The phrase "authorized by law" was construed by the Supreme Court of Massachusetts as follows:

"The question depends on the meaning of the words "not authorized by law;" in respect to which we can not entertain a doubt. By the word "law", as we think, the legislature intended to refer to the municipal law of this Commonwealth, *the law of the land;* or in other words, *any law having force in this Commonwealth*, either by a statute of its legislature, or by a law of the United States.

Commonwealth v. *Dana*, 2 Mete. 338.

But it is unnecessary to pursue this. The construction given to the statute in 15 Opin. 235, will scarcely fail to commend itself.

Now, is there any "duty imposed" upon the Postmaster-General, which includes or implies authority to lease?

In 1825, all the acts regulating the Post-office Department were reduced into one and in the first section, in declaring the duties of the Postmaster-General, it is said:

"He shall establish post-offices, * * * at all such places as shall appear to him expedient, on the post roads."

4 Statutes at Large, 102.
Similar statutes are R. S. sections 3829, 396.

Another statute declares:

"Every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail shall arrive."

Act of March 3, 1825; 4 Statutes at Large, p. 105.

So the Postmaster-General had power "to establish post-offices." Does this include the power to make leases for the post-offices so established?

Constructions of the phrase "establish post offices" are not wanting. This phrase is used in the Constitution in conferring upon Congress its power to create (or rather continue) the postal system, and its meaning is well settled. Chief Justice Marshall said:

"Take for example the power 'to establish post-offices and post-roads.' This power is executed by the single act of making the establishment. But, from this has been inferred the power and duty of carrying the mail along the post-road, from one post-office to another; and, from this implied power, has again been inferred the right to punish those who steal letters from the post-office or rob the mail."

McCullough v. *Maryland*, 4 Wheat. 417.

In this case Chief Justice Marshall made it clear that the word "necessary" as applied to construction of the powers of government could not be held to mean *indispensably* necessary, but was broader; as "needful," "requisite," "essential," "conducive to."

Justice Story said:

"The whole practical course of the Government upon this subject from its first organization down to the present time, under every administration, has repudiated the strict and narrow construction

of the words above mentioned. The power to establish post-offices and post-roads has never been understood to include no more than the power to point out and designate post-offices and post-roads. Resort has constantly been had to the more expanded sense of the word "established:" and no other sense can include the objects which the post-office laws have constantly included."

2 Story on the Const., section 1136, (old ed.)

Again:

"In the next place let us see what, upon this narrow interpretation, becomes of the power in another aspect. It is to establish post-offices. Now, the argument supposes, that this does not authorize the purchase or erection of a building for an office, but it does necessarily suppose the authority to erect or create an office, to regulate the duties of the officers, and to fix a place where his duties are to be performed. It then unavoidably includes, not merely the power to designate, but a power to create the thing intended, and *to do all other acts to make the thing effectual.*"

2 Story on the Const., section 1133, (old ed.)

Again:

"Yet no man ever imagined such a construction to be justifiable. And why not? Plainly because constitutions of government are not instruments to be scrutinized, and weighed upon metaphysical or grammatical niceties. They do not turn upon ingenious subtleties, but are adapted to the business and exigencies of human society, *and the powers given are understood in a large sense in order to secure the public interests.*"

2 Story on the Const., Section 1134, (old ed.;)
McCullough v. *Maryland*, 4 Wheat. 416-7;
Postmaster-General v. *Early*, 12 Wheat. 136.

In the new edition of Justice Story's book (1891), the same views are yet more elaborately and emphatically stated. Vol. 2, Sections 1124 to 1150.

Mr. Desty says:

"To establish, comprehends the *renting* or building of a house," etc., etc.

Desty's Fed. Const. p. 93.

A decision of the Kentucky Court of Appeals, contains perhaps, the most elaborate treatment of the phrase "to establish," anywhere to be found.

The Court said:

"It (the phrase 'to establish') must be understood to mean, not merely *to designate*, but *to create*, *erect*, *build*, *prepare*, *fix permanently*. Thus to establish a character is not to *assume* or *adopt* some pre-existing character, or business, or school, or manufactory, or government. To establish, in each of those uses of the phrase, clearly expresses the idea of creating, preparing, founding or building up. * * * It appears to us, therefore, that 'to establish post-offices and post-roads' means *ex vi termini*, not only the designation and adoption of an existing house and road for a post-office and a post-road, but also more comprehensively, the *renting* or *building* of a house, and the construction and reparation of a road. * * A postoffice can not be established without a house, * * * and consequently, if Congress deems the buying or building of a house for a post-office expedient, it may and should buy or build one, and the power to do so could not be questioned: because * * * * whether a house shall be rented, or bought, or built, is a question altogether of expediency, and *not in any degree or any case, a question of power.*"

Dickey v. Maysville & L. 7 Dana 125

Now all these constructions of the Constitution apply to the Act which gives the Postmaster General the power "to establish post-offices," for the grant of power to him is in the same words that were used in the grant to Congress. This scarcely needs authority, but it has been settled.

In the case of *Ware* v. *The United States*, 4 Wall. 617, Mr. Ashton, Assistant Attorney-General, affirmed that:

"The Postmaster-General may lawfully do, under the power conferred on him by the Act of 1825, to 'establish post-offices' whatever Congress might lawfully do under the same power conferred on it by the Constitution." (p. 624.)

Mr. Justice Clifford, in the opinion, took the same view, saying:

"It is difficult to see why the Postmaster-General may not do the same thing when acting under an Act of Congress expressed in the very words in the Constitution from which Congress derives its power." (p. 632.)

So it is perfectly clear that the Postmaster-General had, by virtue of his power "to establish post-offices," full power to rent, or lease, in short, all the power of Congress which had not been taken from him by some negative act of Congress; and the power to lease, while it has been treated as a power "necessarily implied" from the power "to establish," is something more. It is more correct to call it an "included" power than an "implied" power; but whatever be its correct name, it was a power which reposed in the Postmaster-General's hands at the time he made the lease sued on; so it was "authorized by law" within Section 3732.

There are other statutes which recognize the right of the Postmaster-General to make a lease in such terms that they may justly be regarded as *express* grants of power to make leases.

The Act of July 1, 1864, commanded,

"That at the office of New York and offices of the first and second classes, the Postmaster-General *shall allow* to the postmaster a just and reasonable sum for the necessary cost, in whole or in part, of *rent*, fuel, lights, etc.

13 Statutes at Large, 336.

The same statute provided for the classification of postmasters according to what had been their former compensation; those who for two years preceding July 1, 1864, had received "less than $3,000 but not less than $2,000," were assigned to the second class; and those from $3,000 to $4,000, were assigned to the first class

13 Statutes at Large, 335-6.

Referring to the United States Official Register or "Blue Book" for 1863, at page 364, the compensation of the LaFayette postmaster is seen to be $2,000. So it was in 1861, "Blue Book," p. 342, P. O. Dept. So, from the first classification, LaFayette was never lower than the second class; and very soon after the classification the compensation was made

$3,000. ("Blue Book" 1895, Appendix p. 84, P. O. Dept.) So *rent* was expressly authorized to be paid at LaFayette when the lease was made.

Then there are the appropriation acts from year to year constantly providing money for "rent."

"Rent" implies a "use" of lands, and a use implies an arrangement for the use, *i. e.*, a lease. (Taylor on Landlord and Tenant, 369.) These statutes are clear proofs of the power to make a lease. The power to make a lease includes, of course, the power to fix its terms, the rent to be paid, the term of occupancy, etc., etc.

"The power to establish the price (for carrying mails) includes the power also to declare the *period of its duration.*"

Chicago Ry. Co. v. *U. S.*, 104 U. S. 684.

"As was said in the case of *Chicago, etc., Ry. Co.* v. *U. S.*, 104 U. S. 680, the power thus vested in the Postmaster-General to establish the price, includes the power to prescribe the *period of its duration.*"

Jacksonville R. R. Co. v. *United States*, 118 U. S. 627.

When it is admitted, as we think it must be, that the Postmaster-General has power to make a lease, it follows that, in the absence of a statute limiting the length of time leases may run, he has plenary power (unless acting in bad faith) to make leases, for, if a Court should assume to inquire into the necessity of the lease, *i. e.*, whether a lease of one, two, five or twenty years was longer than necessary to the proper conduct of the post office in a given place, that would be *ipso facto* to deny the power, and moreover it would seem impossible to find any basis for decision of such a question.

Chief Justice Marshall indicated how the Courts will dispose of such a question:

"But where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the

line which circumscribes the judicial department, and to tread on legislative ground. This Court disclaims all pretensions to such a power."

McCullough v. *Maryland*, 4 Wheat 423.

But it requires neither argument nor authority to prove that an officer who has been given all the power of Congress with reference to post-offices has power to make a lease of any length necessary in his judgment for the postal service, unless Congress has withdrawn some of the power. There was no statute in force, we insist, when the lease sued on was made, which took away the power to make a lease for any length of time, and so the lease was "authorized by law" both by necessary implication from the power "to establish" and by the express authority to pay "rent." Besides the collateral stipulations to erect a new building containing designated quarters suitable for the postal service and furnished with boxes, etc., to be maintained for a specific time creates a contract "which can not be disregarded by the Government without a breach of good faith."

Jacksonville, etc., v. *United States*, 118 U. S. 627-8.

Again, the conclusion that the lease sued on was "authorized by law" may be arrived at upon another principle which it does not become a sovereign State to deny.

Attorney General Garland advised that the lease sued on was not authorized, and on his recommendation the Government vacated the premises.

18 Atty.-Gen. Opin. 215.

Postponing any discussion of his opinion for the present, it will be noticed that he passed upon *three twenty-year leases* at the same time.

The record shows that a ten-year lease was made at LaFayette, Indiana, prior to the lease sued on. These instances amply indicate a *usage* in the Postoffice Department to make

leases of any length deemed wise. The particular lease sued on was made by John A. J. Creswell, a lawyer whom no one would lightly accuse of being ignorant of what his duty "to establish postoffices" meant. It has been held that a *usage* of this kind, necessarily known to Congress and not forbidden, amounts to a valid grant of power.

In *United States* v. *Reeside*, Justice Baldwin said:

"The agency of the Postmaster-General is not confined to the letter of the law. The known *usage* of this Department, not corrected or repudiated by any law, may be equivalent to a new grant of power by Congress, especially in matters officially communicated to either House, and not disposed of by resolution or forbidden by law; *the acquiescence of the legislature in a notorious usage having the same effect of a law where former laws are silent on the subject.* This is a rule in relation to all the departments of the Government. The operations of the Postoffice Department can not be suspended for an hour without public complaint and inconvenience. Yet contingencies constantly arise which require the most prompt and efficient action without regard to expense in any case, and often without inquiring into his powers, which the public take for granted are adequate for any emergency, and hold him responsible for their plenary exercise."

Manuscript Opinion cited by Messrs. Black and Curtis in 7 Wall, 672.

This usage "favors the construction" Mr. Creswell put upon the statutes.

Garfielde v. *United States*, 93 U. S. 246.

Mr. Justice Field recognizes *practical* construction of the power "to establish postoffices."

Ex-parte Jackson, 96 U. S. 732.

Mr. Justice Clifford recognizes the "immemorial usages of the Department" as having weight as to the meaning of the power "to establish."

Ware v. *United States*, 4 Wall 633.

In what condition would be the postal service, if the phrase "authorized by law" can be twisted by construction into "expressly authorized?" The duty of the Postmaster-General is emphatic. "He *shall* establish." Suppose he can not obtain a room or a house for a postoffice unless he takes a lease for five, ten or twenty years. Suppose he can not obtain a building of character to protect the mails from robbery or fire unless he enters into an arrangement for one to be built (as at LaFayette), and on his part agrees to take it for a term of years sufficient to induce some one to build it. Suppose it should become necessary to open a postoffice at a new town. No appropriation would have been made for rent for even one year, for the postoffice would have had no prior existence. Shall the postmaster violate his duty "to establish postoffices" at a place of this kind until an appropriation is made? Suppose Congress fails, as it sometimes has, to make appropriations for "rent" by that name, is it the law that every leased postoffice in most of the cities and towns shall be closed? In fact, the postal service could not be conducted under such a rule. Every little incidental thing with which a postal officer is daily met, could not be done because not "expressly" authorized, and thus the great end which it is the duty of the officer to accomplish could not be reached because the various acts which make the great object possible, are not "expressly" authorized.

It was contended in the Circuit Court that the Postmaster-General might abuse his power and cripple the service by too long leases through favoritism, and therefore the power did not exist. We do not apprehend that the Government will adhere to the position that because a power may be abused, therefore it does not exist. All power may be abused, and by this token no officer of Government has any power. But the Court will not presume that high officers will abuse their powers. Chief Justice Taney said: "And it can scarcely, we think, be supposed, that any one filling that high office (the office of Postmaster-General) and acting on behalf of the United States, would suffer the true spirit and meaning of the contract * * * to be violated or evaded."

Scaright v. *Stokes*, 3 How. 171; also,
Neil v. *State*, 3 How. 745.

We submit, therefore, that the Postmaster-General was adequately "authorized by law," within the meaning of Section 3732, to make the lease sued on. See, also,

Dougherty v. *United States*, 18 C. Cl. 503;
N. Y. C. & H. R. R. v. *United States*, 21 C. Cl. 473.

In the case last cited the question came before the Court of Claims whether or not a contract for carrying the mails for a period longer than the appropriation covered, was valid. Speaking of Sections 3732 and 3679, it was said:

"Those sections apply to the public service in general, and must not be construed in connection with other statutes, but must yield to the special provisions directly and solely applicable to the Post-office Department. The immense postal service, interwoven as it is with all the business and social interests of the people, *is a continuing service which must be provided for not separately for one year, but for succeeding years*, often in advance of, but in reliance upon the usual annual appropriations."

As was said by the Court of Claims in the above case, this Court has proceeded upon the same view, viz., that the general sections are not applicable to the postal service, and must give way to special statutes applicable solely to the postal service, and to the needs of the service.

Chicago Ry Co. v. *United States*, 104 U. S. 680.

Certainly, the special imperative provision that the Postmaster-General "shall establish" post-offices can not be nullified by a provision directed to the Government generally. Congress never intended the postal service to be thus crippled.

As already mentioned, Mr. Attorney-General Garland gave an opinion in this case which no doubt will be noticed by the Government. (18 Opin. 215.)

He advised the Postmaster-General that the lease in suit,

together with two others, was invalid. One of the leases passed upon was made after section 3679 R. S. was enacted, which, if applicable to the Postoffice Department, prohibits all contracts not provided for by appropriation, whereas section 3732 allows contracts if "authorized by law," and the Attorney-General labored under the difficulty of settling two very different cases in one opinion. The ability of Mr. Garland is known, yet it will be noticed that the statute providing that the Postmaster-General "*shall establish*" postoffices, is not mentioned. We can not presume that the distinguished Attorney-General was ignorant of the existence of the statute, or of the construction Chief Justice Marshall, Justice Story, and others, had early given to the phrase "to establish." We must suppose, therefore, that he regarded nothing as "authorized by law" which arose out of the power of the Postmaster-General "to establish postoffices." If the power "to establish" does not authorize a necessary lease, it would be very difficult to select a given thing that it does authorize. There is not, and never has been, so far as we can find, a statute which, by express words, authorizes the Postmaster General to "lease" for postoffice purposes. The words "to lease" or "to rent" are not used in connection with this department, so far as we can ascertain, in connection with maintaining offices generally throughout the country. The power is included in the power "to establish."

The opinion, we submit with profound deference, is subject to another criticism. In speaking of the Act of March 3, 1869, which appropriates $875,000 for miscellaneous payments, the Attorney-General says that it "*made no reference to rent.*"

When it is considered that it was customary to provide for *rents* by the miscellaneous appropriation (two such acts are cited in the opinion), we think this treatment of the subject savors of haste.

The statute shows "rent" was in fact provided for by the Act of 1869 under the miscellaneous appropriation.

15 Statutes at Large 323.

Otherwise the Government would have been without its postal facilities for a year. Two cases were relied upon by Attorney-General Garland to sustain his opinion.

The Floyd Acceptances, 7 Wall., 666;
McCollum v. *United States* 17 C. Cl. 92.

We do not believe that either affords support to the opinion so far as the LaFayette lease is concerned.

In the case of *The Floyd Acceptances*, it was simply decided that the head of a department had no authority to lend the credit of the Government by accepting accommodation paper. The Court said:

"It seems to us that such a transaction can be defended on no principle of law. * * * The paper was in fact accommodation paper, as it was found to be by the Court of Claims, by which the Secretary undertook to make the United States acceptor for the sole benefit of the drawers. It was a loan of the credit of the Government volunteered by him without consideration and without authority."

There was a statute (of 1823) in force which expressly prohibited the action of the Secretary, to-wit: "From and after the passage of this Act, no advance of public money shall be made in any case whatever," etc. We can not see that this decision authorized the violation of the LaFayette lease. Nothing could be more foreign to the objects of Government than the acceptance of accommodation paper without consideration, or otherwise binding the Government as surety. There is no particle of reason for saying that such a power is necessary for the accomplishment of any of the powers of Government, and so it was decided.

But this same case forcibly repudiates the extremely strict construction of Mr. Garland as follows:

"The authority to issue bills of exchange, not being one expressly given by statute, can only arise as an incident to the exercise of some other power. When it becomes the duty of some officer to pay money at a distant point, he may do so by a bill of exchange, *because that is the usual and appropriate mode of doing it.*"

What is the "usual and appropriate mode" of "establishing" a post-office if not to lease a building?

We submit that *McCollum* v. *United States*, 17 C. Cl., is perhaps no longer followed by that Court.

Dougherty v. *U. S.*, 18 C. Cl. 503, *supra*;
N. Y. C., etc., Co. v. *U. S.*, 21 C. Cl. 473.

It is hardly credible that Congress intended by Section 3732 to require the thousands of persons leasing quarters to the Postal Deparment throughout the country, and who get their rent out of a lump-sum appropriation, to know the state of the Government contracts to be met by the appropriations.

The long-continued and well known usage of the department to make post-office leases for terms of years, warrants the practice.

Stuart v. *Laird*, 1 Cranch 299;
Martin v. *Hunter*, 1 Wheat. 304;
Cohens v. *Virginia*, 6 Wheat. 264;
Cooley v. *Port Wardens*, 12 How. 299,
Litho. Co. v. *Sarony*, 111 U. S. 53;
The Laura 114 U. S. 411;
Parvin v. *Wimberg*, 130 Ind., p. 561;
Ware v. *United States*, 4 Wall, p. 633.

Plaintiff in Error asks that the case be reversed with instructions to enter judgment in her favor on the admitted facts.

Respectfully submitted,

ADDISON C. HARRIS,
Attorney for Plaintiff in Error.

Indianapolis, October 2, 1893.

153-489

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In the Supreme Court of the United States.

OCTOBER TERM, 1894.

R. SOPHIA CHASE, EXECUTRIX, ETC., plaintiff in error,
v.
THE UNITED STATES.
No. 83.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

R. SOPHIA CHASE, EXECUTRIX, ETC., plaintiff in error, v. THE UNITED STATES. } No. 83.

BRIEF FOR THE UNITED STATES.

This was a judgment of the circuit court of the United States for the district of Indiana of the 29th of October, 1890, sustaining the demurrer of the United States to the petition of R. Sophia Chase, executrix of Hiram W. Chase, deceased, brought to recover from the Government the sum of $6,000, being the rent for four years, at $1,500, of certain parts of a building in the city of Lafayette, Ind., which, the petition alleges, was leased to the United States for the period of twenty years from the 1st day of July, 1870, by deed, dated 4th of February, 1870, between the United States of America, by J. A. J. Creswell, Postmaster-General, party of the first part, and James Montgomery, of the city of Chicago, of the second part.

By various assignments, which appear in the record, the interest of James Montgomery, the lessor in said deed, passed to Hiram W. Chase.

The deed under which this claim is asserted appears on pages 2 to 4 of the record.

The opinion of the Hon. Walter Q. Gresham, circuit judge presiding in said court, appears on pages 9 and 10 of the record.

The ground of the demurrer, as stated on page 8, and in the opinion of the court, is—

> The complainant fails to show any specific authority conferred upon the Postmaster-General by Congress for the execution of the lease, and the length of time for which the same was executed exceeds his authority, both express or implied.

ARGUMENT.

> Individuals, as well as courts, must take notice of the extent of the authority conferred by law upon a person acting in an official capacity; and the rule applies in such case that ignorance of the law furnishes no excuse for any mistake or wrongful act. (*State* v. *Hayes*, 52 Mo., 578; *Delafield* v. *State*, 22 Wend., 238; *Mayor* v. *Reynolds*, 20 Md., 10; *Whiteside* v. *United States*, 93 U. S., 257.)

As stated by Judge Gresham in his opinion, p. 10—

> The executive officers of the Government have no power to bind it by contract, unless there be statutes expressly, or by clear implication, authorizing them to do so. The annual appropriations which are made by Congress to defray the expenses of the Executive Departments do not authorize heads of those Departments to bind the Government by con-

tracts beyond the time for which such appropriations are made applicable.

Section 3732, Revised Statutes, provides:

> No contract or purchase on behalf of the United States shall be made unless the same is authorized by law, or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

Section 3679 provides:

> No Department of the Government shall expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year; or involve the Government in any contract, for the future payment of money, in excess of such appropriations.

By the terms of this deed of lease the property was demised to the Government for the term of twenty years; and—

> In consideration whereof, said party of the first part hereby accepts said lease for the term aforesaid, of the premises above described, and agreeing to pay therefor to said Montgomery, his legal representatives, or assigns, the yearly rent of $1,500, payable in quarterly installments of $375, on the first days of August, November, February, and May in each year during the continuance of this lease.

The legal effect of said contract plainly being to "involve the Government for the future payment of money in excess of such appropriation;" the appropriations for the rent of buildings for the use of the Government being made annually.

In *Stansbury* v. *The United States* (8 Wall., 36), the Secretary of the Interior had employed one who was a clerk in his Department to go to Europe and prepare for that Department an account of the world's fair, then about to be held, agreeing to pay his expenses and a reasonable compensation for his services. In an action brought by Stansbury against the Government on this contract this court held: That the contract was not binding on the Government, because the Secretary had not the authority of law to make it; and because no appropriation had been made to meet the amount so contracted for.

In *Bradley* v. *The United States* (98 U. S., 104), Mr. Creswell, then Postmaster-General, took by lease from Bradley certain real property in Washington, D. C., for the use of the Post-Office Department, for a term of three years, at $4,200 per annum. Congress appropriated $1,800 each year to pay this rent. The suit was brought to recover the whole amount reserved under the lease. This court held that public officers, having no funds in the Treasury and being without authority to bind the United States, can only agree to pay the stipulated rent provided the money is appropriated by Congress.

The learned counsel for the appellant contends, however, that the term "authorized by law," as employed in section 3732, should not be confined to express statutory authority, but that it is sufficient if the authority is necessarily inferable from some duty imposed upon him who assumes to exercise it.

We may concede, for the purposes of this case, that the term embraces everything which may be properly recog-

nized as the law, whether common law, statute, or judicial decision. And yet we are unable to discover how, from any or all of these, there can be deduced an authority to a head of an Executive Department of the Government to bind the Government by his contracts for the lease or purchase of real estate upon such terms as to him may seem proper. It would seem to be obvious that such a power, lodged in the hands of any member of the Executive Department of the Government, would be destructive of all the "checks and balances," by enabling one officer of the Government to impose, without limit, liabilities upon the Government to which the Treasury must respond without express appropriation therefor by Congress.

But the authority needed, it is claimed, exists under the eighth section of the first article of the Constitution, which confers upon Congress the power "To establish post-offices and post-roads," which, it is insisted, "comprehends the renting or building of a house, and the construction and repair of a road, and the appropriation of money for such purposes."

It can not be doubted that such power resides in the Congress. The question here is, has Congress exercised that power by granting to the Postmaster-General the authority to lease property for a term of twenty years for post-office purposes.

As to this, it is contended that under sections 396 and 3829 Revised Statutes, such authority is conferred upon the Postmaster-General.

Section 396 makes it his duty to "establish and discontinue post-offices."

Section 3829 provides:

> The Postmaster-General shall establish post-offices at all such places on post roads established by law, as he may deem expedient.

However broad may be the meaning given to the word "establish," as used in the Constitution, in defining the powers of Congress, it can not, with any regard to the propriety of language, be claimed that an equal breadth of meaning shall be allowed that term in the statutes which prescribe the duty of an Executive officer of the Government.

In *Ware* v. *The United States* (4 Wall., 632)—

> Power to establish post-offices and post roads is conferred upon Congress, but the policy of the Government, from the time the general post-office was established, has been to delegate the power *to designate the places where the mails shall be received and delivered to the Postmaster-General.*

From which it would seem that the word "establish," as used in the act of Congress prescribing the duties of the Postmaster-General, is limited in its meaning to the designation of *places* where post-offices shall be established, and does not extend to the procurement of the means and instrumentalities by which the postal service is administered.

The construction claimed would confer upon the Postmaster-General the power, without the express aid of Congress, to construct roads of any length and anywhere in the country over which the mails might be carried, as well as erect buildings from which the mails should be distributed.

The lease of this building by the Postmaster-General for a term of twenty years can not be enforced by the courts, because the contract was not authorized by law. It can not be enforced for the further reason that the contract was not "under an appropriation adequate to its fulfillment."

The appropriations of public moneys made annually by the Congress are measured, to some extent at least, by the public revenues accruing for the period for which such appropriations are made. Were it allowed to the head of an Executive Department to impose liabilities upon the Government, independent of the amounts appropriated by Congress, the fiscal accounts of the Government would be in hopeless confusion.

In *Connecticut Mutual Life Insurance Co.* v. *United States* (21 Ct. Clms., 200), the various sections of the Revised Statutes relating to the powers and duties of the Postmaster-General were considered. And referring to the contract in that case, which was a lease for three years of a building in Chicago for post-office purposes, the court said:

> The contract between the parties to this action was made, therefore, subject to the provisions of section 3679, and in so far as it may involve the Government for the payment of money beyond the current fiscal year, it is inoperative and not enforceable against the defendants, even though, as in this case, there was a balance to the credit of the appropriation at the close of the fiscal year sufficient to satisfy the claimant's demands. This point has already been before this court, and it was held in *McCollum's Case* (17 C. Cls., R., 92), that so far as the contract related to the fiscal year, the appropriation being sufficient,

> it was binding, but beyond that its only force was "to give the Postmaster-General each fiscal year thereafter, when a new appropriation should be made, the opportunity to adopt and ratify the contract for another year. In other words, a lease for a term of years, founded on an annual appropriation, is binding on the Government only until the end of that year, with a future option from year to year until the end of the lease."

It is further insisted that whatever may be said as to the original validity of this transaction, and others of the same class, that the long-continued usage of the Government sanctions now the recognition and enforcement of this contract.

In the *Floyd Acceptances* (7 Wall., 672,) Miller, J., said:

> The use of them in such cases, however common, can not establish a usage in cases not so authorized. It may also be questioned whether the frequent exercise of a power unauthorized by law by officers of the Government can ever by its frequency be made to stand as a just foundation for the very authority which is thus assumed.

So, again, on the question of the power of the Secretary to make the contract in question, he says (p. 680):

> Our statute books are filled with cases authorizing the making of contracts with the Government through its various officers and Departments. But in every instance the person entering into such a contract must look to the statute under which it is made and see for himself that his contract comes within the terms of the law.

HOLMES CONRAD,
Assistant Attorney-General.